Supreme Court, U.S.
FILED

10-119 APR 26 2010

OFFICE OF THE CLERK

No: 09 A 757

IN THE
SUPREME COURT OF THE UNITED STATES

LEO STOLLER,
v.
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Leo Stoller, *pro se*
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QUESTION PRESENTED

1. Whether the *Mack* filing bar (*Superior Sys. Int'l v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995)(per ciruam) violates the Petitioner's due process and equal protection rights under the First, Fifth and Fourteenth Amendments of the U.S. Constitution?

2. Whether a *Mack* filing bar is constitutional when it acts to deprive a party of his property rights without due process of law?

PARTIES TO THE PROCEEDING

Petitioner, Leo Stoller, 63, *sui juris,* is a nationally known trademark expert for over 35 years, **constitutional scholar,** and a resident of the State of Illinois, County of Cook, 7115 W. North Avenue, #272, Oak Park, Illinois, 60302, (312) 545-4554; email: ldms4@hotmail.com. Web site www.rentamark.net

Respondents are U.S. Court of Appeals for the Seventh Circuit, 219 N. Dearborn, Chicago, Illinois, 60604, Frank H. Easterbrook, Chief Judge, Richard A. Posner, Circuit Judge, and Diane S. Sykes, Circuit Judge.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment(s) below.

OPINIONS BELOW

The opinion dated **December 4, 2009**, of the United States Court of Appeals for the Seventh Circuit at **Appendix A-1** is published. This opinion unconstitutionally reinstated a *Mack* filing bar against the Petitioner and directed and directed all federal courts in the Northern District of Illinois to return unfiled any papers submitted either directly or indirectly by the Petitioner or on his behalf. See *City of Chicago,* 500 P.3d 582, 585-86 (7th Cir. 2007). *Support Sys. Int'l v. Mack,* 45 F.3d 185, 86 (7th Cir. 1995)(per curiam).

The opinion dated **December 17, 2009** of the United States Court of Appeals for the Seventh Circuit at **Appendix A-2** is published. This opinion unconstitutionally dismissed Petitioner's appeal 09-3569 pursuant to "the filing bar imposed on appellant by this court. In re: Leo Stoller, No. 08-4240 (7th Cir. December 4, 2009).

The opinion dated **January 7, 2010**, of the United States Court of Appeals for the Seventh Circuit at **Appendix A-3** is published. This opinion unconstitutionally dismissed Seventh Circuit Court of Appeals, Appeal No. 09-3463. The Petitioner was required to pay an appellate filing fee or seek leave to proceed *in forma pauperis* by December 8, 2009. On account of the *Mack* filing bar, the Petitioner was unable to file his appellate filing fee or seek leave to proceed *in forma pauperis* and, subsequently, Appeal No. 09-3463 was dismissed as a result of the Seventh Circuit's *Mack* filing bar.

The opinion dated **January 20, 2010**, of the United States Court of Appeals for the Seventh Circuit at **Appendix A-4** is published. This opinion unconstitutionally dismissed Appeal Nos. 09-2352, 09-2354, 09-2358, 09-2362, 09-2363, 09-2372, 09-2385, 09-2386, 09-2387 and 09-2388 pursuant to the filing bar imposed. Petitioner is seeking a finding that the Seventh Circuit bar is unconstitutional and reinstatement of all of Petitioner's said appeals.

JURISDICTION

The dates on which the United States Court of Appeals decided Petitioner's related cases were **December 4, 2009, December 17, 2009**, **January 7, 2010** and **January 20, 2010**. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Justice Stevens granted the Petitioner a Motion for Extension of Time to File A Petition for Writ of Certiorari, Writ of Prohibition and/or Writ of Mandamus on or before **May 3, 2010.**

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Petitioner's First, Fifth, and Fourteenth Amendments of due process and equal protection.

STATEMENT

This is an appeal of the Seventh Circuit Court of Appeals decision(s) dated December 4, 2009, which unconstitutionally bans the Petitioner from filing any papers in the Northern District of Illinois. *Support Sys.*

Int'l v. Mack, 45 F.3d 185, 86 (7th Cir. 1995)(per curiam).

As a result of the *Mack* bar, the 7th Circuit Court of Appeals unconstitutionally dismissed all of the pending cases and appeals then pending before the Seventh Circuit Court of Appeals and cases pending before the District Court for the Northern District of Illinois. The December 4, 2009 decision dismissed Appeal No. 08-4240. The December 17, 2009 decision dismissed Appeal No. 09-3569. The January 7, 2010 decision dismissed Appeal No. 09-3463, and the January 20, 2010 decision dismissed Appeal Nos. . 09-2352, 09-2354, 09-2358, 09-2362, 09-2363, 09-2372, 09-2385, 09-2386, 09-2387 and 09-2388.

The unconstitutional *Mack* filing bar that has been imposed on citizens by the Seventh Circuit Court of Appeals since at least as early as 1994, violates the First, Fifth and Fourteenth Amendments of the United States Constitution. In particular, the Fifth Amendment states:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment

or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

The *Mack* bar is unconstitutional on its face because it denies a party the right to defend itself in federal court when a case is brought against a party that has a *Mack* bar in federal court, allowing the movant to deprive the *Mack* bar defendant of its property, without due process of law.

For example, the Petitioner filed an action in Cook County state court, Case No. 2010 L 002687. *Leo Stoller v. Bank of New York Mellon Trust,* to recover damages from the defendants for foreclosing on a residential piece of property without any lawful notice.

The Defendant, Bank of New York Mellon Trust,

removed the Petitioner's case from the Circuit Court of Cook County to the Northern District of Illinois, **Appensix A-6,** Case No. 2010 CV 2028 for the sole purpose of obtaining a procedural advantage over the Petitioner and to deprive him of his due process and equal protection rights where the Petitioner is unable to litigate due to the Seventh Circuit Court of Appeals *Mack* filing bar imposed upon the Petitioner on December 4, 2009.

As a result, the *Mack* bar is *per se* unconstitutional, for it does not provide a party with the right to defend itself in federal court when a case is brought against it by another party. As a result, a party, such as the Petitioner, will be guaranteed to be "deprived of his property without due process of law", in clear violation of the Fifth Amendment of the U.S. Constitution when the Seventh Circuit Court imposes the unconstitutional *Mack* filing bar.

REASONS FOR REVIEW

The Seventh Circuit has been imposing the unconstitutional *Mack* filing bar on parties since at least

as early as 1994, depriving U.S. citizens of their due process and equal protection under the First, Fifth and Fourteenth Amendments of the U.S. Constitution. For over 16 years, the *Mack* filing bar is clearly unconstitutional on its face because it allows parties to bring federal court litigation against a party in federal court, and the *Mack* filing bar party is unable to defend itself and will be deprived of its property, as in the case at bar.

QUIS CUSTODES CUSTODIT
WHO GUARDS THE GUARD

The U.S. Supreme Court is the guardian of the U.S. Constitution and, as such, is required under these circumstances to issue a ruling finding that the *Mack* bar is unconstitutional because it allows a citizen to be deprived of his property without due process of the law. The Petitioner had petitioned the Seventh Circuit Court of Appeals twice before filing this petition before this Court for leave to file a request that the Appellant be able to exercise his First, Fifth and Fourteenth Amendment rights to defend himself in the Northern District of Illinois in Case No. 10 CV 2028. The Seventh

Circuit Court of Appeals returned the Petitioner's request by mail marked "received and returned unfiled". See **Appendix A-5**.

SUMMARY

The Seventh Circuit Court of Appeals has been imposing an unconstitutional *Mack* filing bar since at least as early as 1994, depriving U.S. citizens of their constitutional right of due process and equal protection by allowing their property rights to be taken from them without due process of law.

CONCLUSION

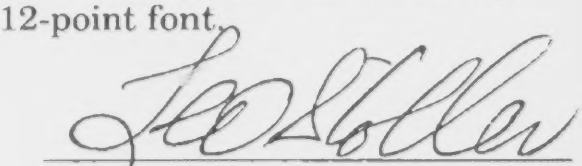
Petitioner is requesting that this Court enter an order finding that the *Mack* filing bar is unconstitutional and order the Seventh Circuit to restore all of Petitioner's said appeals.

Respectfully submitted

Leo Stoller, *pro se*
7115 W. North Avenue
Oak Park, Illinois 60302
(312) 545-4554

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type of volume limitation pursuant to Rule 33 of the Rules of the Supreme Court. The brief contains 14 pages and 2,013 words of proportionately spaced text. The type face is CentSchbook BT, 12-point font.

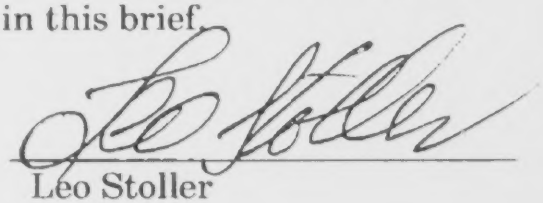


Leo Stoller

Date: 05-17-10

STATEMENT

Petitioner certifies that all materials are listed in the appendix and contained in this brief.



Leo Stoller

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Decision dated January 20, 2010
In re: Leo Stoller, Debtor-Appellant
Nos. 09-2352; 09-2354; 09-2358; 09-2362;
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UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

FRANK H. EASTERBROOK, Chief Judge
RICHARD A. POSNER, Circuit Judge
DIANE S. SYKES, Circuit Judge

No. 08-4240	Appeal from the
IN RE: LEO STOLLER,	U.S. District Court for
Debtor-Appellant.	For the Northern District of IL - Eastern Division

Appellant Leo Stoller sought leave to proceed in forma pauperis on appeal and filed an affidavit swearing that his

APPENDIX A-1

only income is $589 per month in Social Security benefits. Seven months earlier, however, Stoller paid a $10,000 sanction imposed by this court. We were skeptical that Stoller could have paid such a large fine and yet claim to be indigent, so we ordered him to show cause why the appeal should not be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(A). We discharged the rule to show cause after Stoller responded that his brother Christopher Stoller provided the funds to pay the sanction. We denied Stoller's motion for leave to proceed in forma pauperis, however, and Stoller then paid the $455 filing fee. This conflicted with his allegations of indigency, so we reissued the order to show cause. We warned that if we concluded that Stoller had falsely,claimed to be indigent, we would reimpose a prior *Mack* bar against him. Stoller insisted he had been truthful, so we referred the matter to a special master to take testimony and consider the apparently conflicting evidence.

Magistrate Judge Geraldine Soat Brown, as special master, devoted considerable time to the matter, filed a written report, and now seeks guidance from this court regarding whether additional

proceedings are necessary. Judge Brown reports that she took numerous submissions from Stoller; Pure Fishing, Inc. (one of Stoller's creditors); and the trustee of Stoller's bankruptcy estate. She also took judicial notice of filings in other court proceedings. We accept Judge Brown's thorough report and conclude that no further proceedings are necessary. Although the report describes numerous examples of Stoller's duplicity, we need only recite a few here. For instance, in September 2009 Stoller attempted to appear as an expert witness in a Wisconsin case, and the plaintiff said she paid Stoller a $300 fee for his services. In his expert report in that case, Stoller claimed to have "been involved in" more than 60 trademark-infringement lawsuits as an expert witness and represented that he published three self-help litigation manuals in 2008. He also claimed he has served as executive director of several organizations pertaining to the enforcement of intellectual-property rights and the ethical obligations of attorneys and judges, and has "sued more lawyers for legal malpractice in Chicago, Illinois than any other party." This conflicts with his representation that he is unemployed and his only income is $589 per month in Social Security benefits. In addition, although Stoller told this court that his brother Christopher gave him the money to

pay the $10,000 sanction, filings in Christopher's Arizona bankruptcy case do not list any gifts or loans to Stoller.

This is enough to establish that Stoller has been deceptive. Accordingly, IT IS ORDERED that this appeal is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(A).

IT IS FURTHER ORDERED that the *Mack* bar against Stoller is reinstated. The clerks of all federal courts in this circuit are directed to return unfiled any papers submitted either directly or indirectly by him or on his behalf. *See In re City of Chicago,* 500 F.3d 582, 585-86 (7th Cir. 2007); *Support Sys. Int% Inc. v. Mack,* 45 F.3d 185, 186 (7th Cir. 1995) (per curiam). In accordance with our decision in *Mack,* exceptions to this filing bar are made for criminal cases and for applications for writs of habeas corpus. *See Mack,* 45 F.3d at 186-87. The appellant is authorized to submit to this court, no earlier than two years from the date of this order, a motion to modify or rescind this order. *See City of Chicago,* 500 F.3d at 58586; *Mack,* 45 F.3d at 186.

IT IS FURTHER ORDERED that the clerk of this court shall forward the Report of the Special Master and Request for Instructions, prepared by

Judge Brown, to the U.S. Attorney for the Northern District of Illinois for consideration of whether a perjury prosecution is warranted.

Judge Brown has our thanks for her service to the court on this matter.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

ORDER

December 17, 2009

BEFORE
FRANK H. EASTERBROOK,
Chief Judge
RICHARD A. POSNER,
Circuit Judge
DIANE S. SYKES,
Circuit Judge

No. 09-3569

Google Incorporated,
Plaintiff-Appellee,
v.
CENTRAL MANUFACTURING,
INCORPORATED, et. al.,

APPEAL OF: LEO STOLLER

APPENDIX A-2

Upon consideration of the MOTION OF GOOGLE INC. TO DISMISS APPEAL, filed on December 8, 2009, by counsel for the appellee,

IT IS ORDERED that the motion is GRANTED. The appeal is DISMISSED pursuant to the filing bar imposed on appellant by this court. In re: Leo Stoller, No. 08-4240 (7th Cir. December 4, 2009).

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

ORDER

January 7, 2010

By the Court:

No. 09-3463

IN RE: LEO STOLLER,
Debtor-Appellant

District Court No: 1:08-cv-06520
Northern District of Illinoisk Eastern Division
District Judge William J. Hibbler

The following is before the court:

APPENDIX A-3

1. **MOTION TO DISMISS,** filed by appellee Pure Fishing, Incorporated, on December 21, 2009.

Pursuant to this court's order dated November 25, 2009, the appellant was required to pay the appellate filing fees or seek leave to proceed in forma pauperis by December 8, 2009. Pursuant to this court's order in appeal no. 08-4240, dated December 4, 2009, the appellant is barred from filing any papers in this circuit. Because he has neither paid the required filing fees nor previously filed an in forma pauperis motion, **IT IS ORDERED** that this appeal is **DISMISSED.** *See* Cir. R. 3(b).

Accordingly, **IT IS FURTHER ORDERED** that the motion to dismiss is DENIED as unnecessary.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

ORDER

January 20, 2010

FRANK H. EASTERBROOK,
Chief Judge
RICHARD A. POSNER, Circuit Judge
DIANE S. SYKES, Circuit Judge

Nos. 09-2352, 09-2354, 09-2358, 09-2362, 09-2363, 09-2372, 09-2385, 09-2386, 09-2387, 09-2388

IN RE: LEO STOLLER,

Debtor-Appellant

District Court Nos: 1:07-cv-03347, 1:07-cv-03631, 1:07-cv-02223, 1:07-cv-04319, 1:07-cv-04320, 1:07-cv-01315, 1:06-cv-06950, 1:07-cv-03322, 1:07-cv-03820

APPENDIX A-4

Northern District of Illinois, Eastern Division
District Judge William J. Hibbler

The following are before the court:

1) MOTION OF GOOGLE INC. TO DISMISS CONSOLIDATED APPEALS, filed on January 11, 2010, by counsel for the appellee.

2) MOTION FOR LEAVE TO FILE RESPONSE TO MOTION OF GOOGLE, INC. TO DISMISS CONSOLIDATED APPEALS, filed on January 14, 2010, by counsel for the appellant.

IT IS ORDERED that #2 is DENIED.

IT IS FURTHER ORDERED that #1 is GRANTED. The appeal is DISMISSED pursuant to the filing bar imposed on appellant by this court. In re: Leo Stoller, No. 08-4240 (7th Cir. Dec. 4, 2009).

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

In Re:

LEO STOLLER,
Darrah

Appellant.
No. 1:07-cv-5118

decision

Appeal No: 08-4240

Hon. John W.

Appeal from Case

Hon. John W. Darrah

MOTION FOR LEAVE TO FILE A REQUEST TO RECONSIDER

NOW COMES the Appellant, and requests leave of Court to file the attached motion to reconsider its motion for leave to file dated April 2, 2010, attached here to and made a part of hereof. And states as follows: 1.

On Dec. 4, 2009 this court issued a "Mack" filing bar against Leo Stoller. See attached decision.

APPENDIX A-5

2. On April 2, 2010, Stoller sought leave to file the attached Motion for Leave to File on account of his constitutional rights under the First, Fifth and Fourteen Amendments being violated.

3. On April 2, 2010, without the court being given an opportunity to issue a decision on Stoller's attached Motion for Leave, in violation of Stoller's First, Fifth and Fourteen Amendment rights, Stoller Motion for leave was returned unfilled by the Pro Se Clerk, with an attached non responsive form letter attached misstating "Payment of the court sanction along with a motion to reconsider the Restricted File Order will remove your name from this list."

4. In this Court's attached Dec. 4, 2009 *Mack* bar The Seventh Circuit did not issued a monetary sanction against the Appellant. The attached form letter by the Pro Se Clerk is completely non responsive and violates Stoller's Fifth Amendment Rights. Stoller's Motion for Leave to File. Stoller respectfully asserts under the circumstances, the court's failure to address Stoller's attached Motion for Leave to File is a clear violation of Stoller's First, Fifth and Fourteen Amendment Rights under the U.S. Constitution.

5. The Mack bar filing issued against Stoller on Dec. 4, 2010 is clearly unconstitutional if it entitles this court to ignore Stoller's Motion for Leave to File, when Stoller's property rights are under attack in the Federal Court and Stoller is automatically deprived of his property rights by this court's failure to consider Stoller's Motion for Leave to File a Motion to Defend Oneself in the Northern District of Illinois when another party intentional transfers a case from Illinois State Court to the Northern District of Illinois, where Stoller has a Mack filing bar for the sole purpose of depriving Stoller of his property rights without due process.

U.S. Constitution: Fifth Amendment

Fifth Amendment - Rights of Persons
Amendment Text I Annotations
No person shall be held to answer for a capital, or otherwise infamous crime,
unless on a presentment or indictment of a Grand Jury, except in cases arising
in the land or naval forces, or in the Militia,
when in actual service in time of
War or public danger; nor shall any person be subject for the same offence to
be twice put in jeopardy of life or limb; nor shall

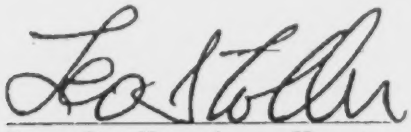
be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

6. This court's failure and/or refusal to address Stoller's attached Motion for Leave to File directly violates Stoller's Fifth Amendment Rights and renders the Mack Bar as Unconstitutional. The Mack Bar nor any other "bar" can be lawfully issued by any court which violates the Fifth Amendment of the U.S. Constitution.

7. Thus Stoller respectfully requests that the court reconsider Stoller's attached Motion for Leave to File, under the circumstances. If the court refuses to honor Stoller's Fifth Amendment Rights, in the alternative, Stoller requests that the court certify the question as to **Whether a Mack Bar is Constitutional when it acts to deprive a party of his property rights without due process of law?**

Wherefore, Stoller prays that the Court reconsider Stoller attached Motion for Leave to File and Stoller asserts that he has a First Amendment Right which dictates that this court issue a ruling on Stoller Motion for Leave, notwithstanding the Mack bar.

Respectfully submitted,



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United States Court of Appeals
For The Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604

Dear Sir or Madam,

I am returning this document to you unfiled. The court has reviewed the document and has determined that the document must be returned per the courts "Restricted Filer" order in your case.

Payment of the court sanction along with a motion to reconsider the Restricted Filer order will remove your name from this list.

Sincerely,

Pro Se Clerk

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

In re: LEO STOLLER,	)	Appeal No. 09-4240
	)	Hon. John. W. Darrah
Appellant.	)	Appeal from Case No.
	)	1:07-cv-5118
	)	Hon. John W. Darrah

MOTION FOR LEAVE TO FILE

NOW COMES the Appellant, and requests leave of Court to file the attached motion requesting that the Appellant be able to exercise his First, Fifth and Fourteenth Amendment rights to defend himself in the Northern District of Illinois.

Respectfully submitted,

Leo Stoller

Leo Stoller
7115 N. North Ave, #272

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

In re: LEO STOLLER,	)	Appeal No. 09-4240
	)	Hon. John. W. Darrah
Appellant.	)	Appeal from Case No.
	)	1:07-cv-5118
	)	Hon. John W. Darrah

MOTION TO DEFEND ONESELF IN THE NORTHERN DISTRICT OF ILLINOIS

NOW COMES the Appellant, and requests and moves this Court to grant the Appellant permission to defend himself in the Northern District of Illinois, and states as follows:

1. On December 4, 2009, this Court issued a *Mack* bar against Leo Stoller.

2. This Court directed "all federal courts in this circuit are directed to return unfiled any papers submitted either directly or indirectly by him (Leo Stoller) or on his behalf .... In accordance with our decision in *Mack,* exceptions to this filing bar are made for criminal cases

and for applications for writs of habeas corpus. ... The appellant is authorized to submit to this court, no earlier than two years from the date of this order, a motion to modify or rescind this order."

3. On March 2, 2010, Leo Stoller filed a civil action in the Circuit Court of Cook County, Illinois, styled Leo Stoller v. Bank of New York, et al., Case No. 2010 L 002687.

4. On April 1, 2010, the Defendants in Case No. 2010 L 002687, Bank of America Corporation, Countrywide Financial Corporation, Reconstruct Company, Bank of New York. Mellon Trust Co. and Bryan Cave LLP moves to remove this action to the United States District Court for the Northern District of Illinois based on federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(b). See attached Notice of Removal.

5. The Appellant believes that the Defendants in the state civil action intentionally removed Stoller's case to federal court in order to deprive Stoller of his due process and equal protection rights under the Fifth and Fourteenth Amendments because they are aware of the *Mack* bar.

6. Stoller asserts that he has a constitutionally right under the First, Fifth and Fourteenth Amendments to defend himself in state and federal court when an action is brought against him.

7. Stoller did not sue the Defendants in federal court and has respected this Court's order of December 4, 2009, in Case No. 08-4240. However, when Defendants in the state court action are aware of the *Mack* bar against Stoller, intentionally for the sole purpose of barring Stoller his constitutional rights, this Court should grant Stoller the right to defend himself in Case No. 10 CV 2028.

8. When a party takes a procedural advantage, which deprives the Appellant of his right to defend himself, this Court should not sanction that conduct either. To do so, violates the constitutional right of the Appellant under his First, Fifth and Fourteenth Amendment rights of the U.S. Constitution.

WHEREFORE, the Appellant requests leave to defend himself in Case No. 10 CV 2028.

Respectfully submitted,

Leo Stoller
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Oak Park, IL 60302
(312) 545-4554

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEO STOLLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 10 CV 2628
	)	
BANK OF NEW YORK, et. al.,	)	
	)	
	)	
Defendants.	)	

NOTICE OF REMOVAL

Defendants Bank of America Corporation, Countrywide Financial Corporation, ReconTrust Company, Bank of New York Mellon Trust Co. and Bryan Cave, LLP ("The Removing Defendants") hereby remove this action to the United States District Court for the Northern District of Illinois based on federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(b), and state in support as follows:

1. On March 2, 2010, a civil action was filed in the Circuit Court of Cook County, Illinois, styled Leo Stoller v. Bank of New York, et al., Case No. 2010 L 002687 (the "State Court Action").

2. On March 2, 2010, the Removing Defendants purportedly were served with a Summons and a copy of the Complaint in the State Court Action. The Removing Defendants do not believe service was proper and intend to timely bring a motion to quash pursuant to Rule 12(b)(5).

3. Upon information and belief, the defendants named individually have not been properly served in the State Court Action, and no defendant has appeared in the State Court Action.

4. Exhibit 1 constitutes all process, pleadings and orders purportedly served upon the Removing Defendants in the State Court Action. 28 U.S.C. § 1446(a).

FEDERAL QUESTION JURISDICTION

5. This Court has original jurisdiction over the State Court Action under 28 U.S.C. § 1331, and the State Court Action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) in

that Plaintiff alleges violations of: (1) the Truth In Lending Act, 15 U.S.C. §§ 1601, et seq.; and (2) RICO, 18 U.S.C. §§ 1961, *et seq.*

6. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1441(c). See 28 U.S.C. § 1367; see also City of Chicago v. International College of Surgeons, 118 S. Ct. 523 (1997). All of plaintiff's claims allegedly arise out of the same core of operative facts. See paras. 45-47, 52-3, 65, 67-70, 77-80 and 82-88 of the Complaint.

CONSENT OF UNSERVED PARTIES IS NOT REQUIRED FOR REMOVAL

7. The only Affidavits of Service in the State Court file refer solely to Bank of America, Countrywide and ReconTrust. (Copies attached as Exhibit 2). There is nothing in the State Court file to evidence service on the other parties named as defendants. Undersigned counsel is aware that on March 2, 2010, Mr. Stoller dropped off with the receptionist at their offices Summons directed to Bryan Cave, LLP, Steven R. Smith and Michael Werich. (See Declaration of Kimberly McCall attached as Exhibit 3). According to Ms. McCall, Mr. Stoller put court papers on her desk and then took a picture of her. This picture of Ms.

McCall appeared shortly thereafter on Mr. Stoller's blog, which he calls "Sue the Bastards." (Copy attached as Exhi

8. Mr. Stoller also apparently visited the Chicago offices of Bank of New York and Bank of America and again took pictures which he posted on his blog. (See Exhibit 4).

9. Mr. Stoller's alleged "service" on the individuals named as defendants was ineffective for several reasons. First, pursuant to 735 ILCS 5/201, process cannot be served by a party. Process can only be served only by the Sheriff or by an individual who has been appointed by the Court. In this case, an order dated March 12, 2010 by the state court appointed Mr. Victor Castro to serve process, but that order was entered ten days after the Summons were delivered to the Bryan Cave offices and it was Mr. Stoller, not Mr. Castro, who delivered the Summons. (Copy of this order is attached as Exhibit 5).

10. Moreover, service on individuals in Illinois is governed by 735 ILCS 5/2-203. Such service must be accomplished by either personally serving the individual or by leaving a copy of the summons at the individual's place of abode. Thus, leaving summons at the offices of Bank of New York, Bank of America and

Bryan Cave directed to the individuals named as defendants does not comply with 735 ILCS 5/2-203 and is not even arguably effective service.

11. Unserved defendants need not join in the notice of removal. *P.P. Farmers' Elevator Co. v. Farmers Elevator Mut. Ins. Co.*, 395 F.2d 546, 547-48 (7th Cir. 1968); *Howell v. Joffe*, 478 F. Supp. 2d 1014, 1019 (N.D. Ill. 2006) ("the Seventh Circuit has held that the consent of parties not served at the time a petition for removal is filed is not necessary for such a petition"). *See also Cachet Residential Builders, Inc. v. Gemini Ins. Co.*, 547 F. Supp. 2d 1028, 1029-1030 (D. Ariz. 2007) (defendant who was improperly served via private mail carrier did not have to consent to removal). Accordingly, consent of unserved individuals is not necessary to effectuate this notice of removal.

TIMELINESS OF REMOVAL

12. The Removing Defendants purportedly were served with Summons on March 2, 2010. This Notice of Removal is being filed on April 1, 2010 and is timely under 28 U.S.C. § 1446(b).

PROCEDURES FOR REMOVAL

13. Pursuant to 28 U.S.C. § 1446(d), the Removing Defendants are filing a copy of this Notice of Removal with the Circuit Court, Cook County, Illinois and upon Plaintiff. Dated: April 1, 2010

BANK OF AMERICA, COUNTRYWIDE FINANCIAL AND RECONTRUST COMPANY, N.A., BANK OF NEW YORK MELLON TRUST CO., and BRYAN CAVE, LLP

By: /s/Steven R. Smith One of
Their Attorneys

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